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O F P M C

Ontario Farm Products Marketing Commission

ROLE OF THE OFPMC IN ONTARIO'S REGULATED MARKETING SYSTEM

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WHAT IS THE ONTARIO FARM PRODUCTS MARKETING COMMISSION?

The Ontario Farm Products Marketing Commission (Commission/OFPMC) is an agency of the Ontario Ministry of Agriculture, Food and Rural Affairs that is accountable for the conduct and impact of Ontario's regulated marketing system. It has the authority to use itself, or delegate/authorize the marketing boards to use, the powers available under the *Farm Products Marketing Act* and the *Milk Act*. The Commission has the authority to limit or revoke any of the powers or authorities given to marketing boards at any time. It can also consider ways to stimulate, increase and improve the producing or marketing of farm products. The Commission is accountable to the Minister, who is then accountable to Cabinet and the Legislature.

In day-to-day practice, the Commission is the central figure in Ontario's regulated marketing system. It facilitates sector stakeholder discussions to effect change to individual commodity marketing systems and it is the supervisor of the marketing boards.

The Commission is responsible for policy development and any regulation or legislation changes related to regulated marketing. It maintains a close working relationship with marketing boards and food industry representatives. And it is responsible for analyzing and presenting those sectors' views on regulated marketing issues to the Minister, within the Ministry of Agriculture, Food and Rural Affairs, across government and to other interested parties.

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Significance of the Commission within Ontario's Regulated Marketing System

A very high level of responsibility and accountability rests with the Commission. The Commission holds an important 'public trust' in the exercise of its duties and in the supervision of the powers and authorities exercised by marketing boards. The Commission ensures the individual commodity systems operate in an effective and responsible manner with due regard to the effects on agri-food sectors and consumers, while at the same time maintaining the public policy goals of the legislation.

The current legislation was enacted to enable producers of a commodity to collectively market their product in an orderly manner and balance the power between many small individual sellers and relatively few larger buyers. The legislation made a variety of powers available to marketing boards. It also provides for a system of accountability for the use of those powers. As power flows down from the legislature to marketing boards, accountability must flow back.

Since the Commission is accountable for the system, it endeavours to consider the interests and impact on stakeholders when changes to marketing systems are considered. It helps to maintain a balance of power between sellers and buyers of regulated agricultural products.

Before elaborating on the specific powers and duties of the Commission, the following overview of the regulated marketing system and the responsibilities of the major participants will help put the Commission's role in perspective.

Overview of the Regulated Marketing System

All regulatory authority for marketing boards in Ontario comes from two pieces of legislation: The *Farm Products Marketing Act* and the *Milk Act*. This legislation outlines the powers and responsibilities of the participants in the regulated marketing system.

Generally, the purpose of the two acts is to:

- stimulate, increase and improve the production or marketing of identified farm products;
- provide for the control and regulation of the producing and marketing within Ontario of identified farm products; and
- under the *Milk Act*, control the quality of dairy products.

Approximately two-thirds of the farm gate value of agricultural products in Ontario are marketed under the province's regulated marketing system through marketing boards. Sales by commodity range from less than one million dollars to over one billion dollars. There are 21 marketing boards in Ontario with responsibilities for a wide range of agricultural products. Marketing plans vary widely amongst boards in the degree to which they control how producers sell their commodities and how companies who purchase raw agricultural commodities (i.e. food processors, dealers) source and purchase their requirements.

The major participants in the province's marketing board system are as follows:

I. provincial Cabinet;
II. Minister of Agriculture, Food & Rural Affairs;
III. Ontario Farm Products Marketing Commission;
IV. marketing boards;
V. buyers of regulated agricultural commodities;
VI. other stakeholders; and
VII. the Farm Products Appeal Tribunal.

Responsibilities of the Major Participants

The provincial Cabinet is responsible for creating or dissolving a marketing board, as well as identifying and defining the regulated product. It is also responsible for establishing a board's electoral districts and the method of representation.

The Minister of Agriculture, Food & Rural Affairs has little 'day-to-day' responsibility for the management or control of the regulated marketing system. The

Minister, however, is directly accountable to Cabinet and the Legislature for all laws associated with agriculture and therefore, is ultimately responsible for the regulated marketing system in Ontario.

The Ontario Farm Products Marketing Commission is responsible for administering the *Farm Products Marketing Act* and the *Milk Act,* and ensuring that:

i) marketing boards operate within the powers and authorities given to them;
ii) the lines of accountability are maintained;
iii) stakeholders have an opportunity to influence how the system operates; and
iv) the public interest in the system is well served.

The Commission is not involved in the day-to-day operation of the marketing boards.

Marketing boards are incorporated organizations representing producers of one or more specific agricultural commodities. Authority is delegated to each board to regulate the production and/or marketing of those commodities. Although most boards do not directly market their commodities, each has been delegated some type of authority related to the marketing of the commodity and they may perform specific marketing functions.

Marketing boards are producer elected, controlled, and financed. All producers of specified commodities are required to sell/market those commodities according to the marketing board's marketing plan. As mentioned earlier, marketing plans vary in how producers sell their commodities and how buyers source and purchase their requirements.

Finally, the Commission must be satisfied that each board is using its powers and authorities responsibly.

Buyers of regulated commodities must comply with regulations established under the acts that, for example, require them to supply information regarding the marketing of identified commodities, apply for a licence as a processor of specific commodities, participate on negotiating committees to establish minimum prices and terms/conditions of sale for specific commodities and abide by those agreements.

Buyers and other stakeholders have the opportunity to serve on industry committees to resolve short and long term issues regarding regulated marketing systems. All stakeholders have a responsibility to make their concerns with the system known first to the relevant marketing board, along with potential solutions. The Commission encourages a board and the affected industry participants to find a solution to an issue. The Commission is available at any time to assist in those deliberations. It will also mediate disputes if there is an impasse on how to resolve an issue and if the Commission determines that it is in the best interests of that industry to do so.

The Farm Products Appeal Tribunal is a 'quasi-judicial body' (as is the Commission) which means it is empowered by the legislature to make decisions that are legally binding on the parties involved. The Appeal Tribunal holds hearings when a decision of a marketing board, the Commission or a director appointed under one of the two acts is appealed. The Tribunal makes decisions based on the evidence presented at those hearings.

Any person who is dissatisfied with a decision of a marketing board must first approach the board and try to resolve the issue. If they are still dissatisfied with the result, they can appeal to the Tribunal within a year. Decisions of the Commission or an appointed director can be appealed directly to the Tribunal.

The Tribunal has very broad authority and may substitute its decision for that of a marketing board, the Commission or an appointed director. It can order the Commission, marketing board or appointed director to take whatever action the Tribunal considers proper with the exception of ordering the Commission to make, change or revoke a provincial regulation.

Anyone dissatisfied with a Tribunal decision has up to 30 days from the day the Tribunal files its decision with the Minister of Agriculture, Food and Rural Affairs to ask the Minister to review the decision.

Powers of the Commission

The *Farm Products Marketing Act* and the *Milk Act* give very broad ranging powers and authorities to the Commission. The Commission decides which authorities will form the framework of any marketing plan. Requests for particular authorities generally originate from the marketing board. The Board must show the Commission why those authorities are needed, how they will be utilized and what the potential impact may be on other sector participants.

The basic authorities may include:

- the ability to charge producer fees;
- the pricing mechanism for selling the commodity;
- how producers will be paid;
- the ability to license dealers or agents;
- the ability to set limits (quotas) on the amount of commodity that a producer can grow and/or market for supply managed commodities.

There are some subject matters on which the Commission may exercise power directly or, if it chooses, it may delegate the power to a marketing board. An example would include licensing producers. However, the Commission cannot directly exercise some powers, such as the power to set/negotiate prices or establish quota. In these cases, it can only authorize a marketing board to use those powers. Finally, there are some important areas where the Commission has direct authority on its own that it cannot delegate to a marketing board; for example bringing negotiated agreements 'into force', which makes them binding on both producers and buyers of the commodity.

The Commission is often referred to as a supervisory body. It is accountable to the Legislature through the Minister of Agriculture, Food and Rural Affairs for the powers it uses and for how the marketing boards use the powers delegated to them. The Commission is responsible for taking into account the broader interests of all sectors affected by the legislation, i.e. primary and further processors, food-service, retail, consumers. In order to fulfill this responsibility, the Commission has been given wide ranging investigative and dispute settling powers, as well as the power to give directions to a marketing board, to place limits on the powers it will, or has already, delegated to a marketing board and finally to revoke or suspend those powers at any time.

Types of Issues Addressed by the Commission

The Commission meets monthly to address current issues affecting the regulated marketing system. Issues generally fall into one of the following five categories.

Marketing System Adjustments:
Individual marketing plans are often amended to meet the changing needs of Ontario's producers and buyers, to adjust to changes in domestic and foreign marketplaces, to maintain orderly marketing and to continue to work in the best interests of Ontario's agri-food industry.

Federal-Provincial Agreements:
The Commission is one of two or three signatories to the five national supply management marketing agreements. These agreements set out how the provinces will share the market for each commodity.

Governance Issues:
Many marketing boards are over 20 years old and in that time, producer numbers and their geographic distribution have changed. Consequently, representation amongst producers was not always equitable. Over the last few years, most marketing boards have addressed this issue.

Marketing Board Mandate Issues:
Most marketing boards were established decades ago under different economic and trade environments. Over the last several years, many boards have faced considerable pressure for changes to their marketing plans from some producers and the customers they supply. Therefore, many boards are dealing with how they meet the needs of a less homogeneous group of producer members, as well as food industry customers who are competing in a global environment.

Producer/Processors/Other Stakeholder Relations: Communication gaps and barriers sometimes exist between industry participants in some commodity sectors. This can slow the development of partnerships that could be addressing problems and exploring opportunities for growth in both the primary agriculture and food processing industries.

Role of the Commission

Given its responsibilities under the legislation and the types of issues it deals with on a daily basis, the Commission has identified its role as having the following four broad aspects:

- supervision and administration;
- policy development and implementation;
- strategic leadership and facilitation; and
- education and information.

The Commission's vision is one of "dynamic, competitive agri-food sectors" and its mission statement states that it will "lead, supervise and direct the regulated agri-food sectors so they effectively respond to market forces". Marketing system adjustments can be initiated by any stakeholder and the Commission will ensure that the affected industry participants discuss the issue and pursue a resolution that is acceptable to industry participants.

How the Commission Fulfills its Role and Resolves Issues

In order to fulfill its legislated responsibilities and identified role, the Commission undertakes the following duties.

a) Facilitate, and direct when necessary, discussions between marketing boards and industry representatives. The Commission pursues an Ontario industry approach to making changes to individual marketing systems, which are needed to respond to evolving market forces.

b) Make policy decisions and administer regulatory changes required to change marketing plans.

c) Investigate and mediate disputes.

d) Advise and consult with national agencies on issues relating to federal-provincial agreements.

e) Provide educational and communication material on board governance and other issues related to regulated marketing.

f) Advise the Minister on policy matters relating to the establishment and operation of marketing boards, as well as ongoing changes to marketing plans.

g) Report to the Minister on the operation and administration of boards.

At its monthly meetings, the Commission holds periodic review meetings with the boards of directors and senior management of marketing boards, as well as meetings with food industry groups to discuss issues. Individual OFPMC members also participate in additional meetings to address regulated marketing issues. These are often industry advisory committee meetings in which current or long term issues involving the entire commodity sector are addressed by growers and other affected industry participants.

Make-up of the Commission

Commission members are private citizens who have experience working in areas such as primary production, primary and further processing, food service, food distribution and grocery retail. The Chair is a civil servant.

The government endeavours to have nine to twelve people on the Commission who will bring a collective experience from several commodity groups, several sectors of the food chain, as well as from across Ontario. Anyone interested in serving on the Commission can contact the Chair or the Minister's office.

Members are appointed by Cabinet. Terms of appointment are normally for a two to three year period and members may be re-appointed for another term.

Total service does not normally exceed six consecutive years.

Expectations of Commission Members

In order to effectively carry out its responsibilities, the following are expectations of Commission members:

- unbiased decision making and consideration of the impact on all sectors of the industry when making decisions – members are not appointed to advocate for a particular commodity or agri-food sector;
- active participation in discussions on issues;
- attendance at all meetings of the Commission as well as preparation prior to the meeting based on briefing material provided by staff;
- contribution to the development of the Commission's strategic plan; and
- if possible, participation in industry advisory committees, ad-hoc committees of the Commission, and attendance at annual meetings of marketing boards and food industry organizations.

Role of Commission Staff

The primary responsibility of Commission staff is to provide sound information and analysis on issues to enable the Commission to make informed decisions that are in the best interests of Ontario.

Responsibilities include the following:

- be a liaison with marketing boards and food industry organizations/representatives;
- identify and recommend issues to be addressed by the Commission;
- consider and present the views of both producers and food industry stakeholders when providing information and analysis to the Commission, the Minister, the ministry, other areas of government as well as other interested parties;
- represent the Commission at marketing board and food industry meetings;
- represent the Commission at national and provincial government meetings as required; and
- implement Commission decisions and objectives.

Summary

The Commission possesses broad regulatory authority within the marketing board system in Ontario. With that authority, comes a great deal of responsibility to producers, buyers, other stakeholders, the agri-food industry as a whole, the Legislature of Ontario and consumers. The Commission seeks to fulfill its duties in an open, efficient manner.